

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v

**CHEVRON PHILLIPS
CHEMICAL COMPANY LP**

Defendant.

§
§
§
§
§
§
§
§
§
§
§

CIVIL NO.

CONSENT DECREE

TABLE OF CONTENTS

I.	JURISDICTION AND VENUE	2
II.	APPLICABILITY	2
III.	DEFINITIONS	4
IV.	CIVIL PENALTY	6
V.	COMPLIANCE REQUIREMENTS	7
VI.	SUPPLEMENTAL ENVIRONMENTAL PROJECT	13
VII.	REPORTING REQUIREMENTS	18
VIII.	STIPULATED PENALTIES	21
IX.	FORCE MAJEURE	25
X.	DISPUTE RESOLUTION	27
XI.	INFORMATION COLLECTION AND RETENTION	30
XII.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS	31
XIII.	COSTS	33
XIV.	NOTICES	33
XV.	EFFECTIVE DATE	34
XVI.	RETENTION OF JURISDICTION	34
XVII.	MODIFICATION	35
XVIII.	TERMINATION	35
XIX.	PUBLIC PARTICIPATION	36
XX.	SIGNATORIES/SERVICE	37
XXI.	INTEGRATION/[APPENDICES]	37
XXII.	FINAL JUDGMENT	38
XXIII.	APPENDICES	38

Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint in this action alleging that Chevron Phillips Chemical Company LP ("Defendant"), violated Section 112(r) of the Clean Air Act ("Act"), 42 U.S.C. § 7412(r), 40 CFR Part 68 Chemical Accident Prevention Provisions; and 40 CFR Part 60, New Source Performance Standards.

Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violations alleged in this Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district.

2. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree or such action and over Defendant, and consents to venue in this judicial district.

3. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 113(b), 42 U.S.C. § 7413(b), as amended.

4. Notice of the commencement of this action has been given to the State of Texas, as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

II. APPLICABILITY

5. The obligations of this Consent Decree apply to and are binding upon the United States and Defendant; Defendant's parent, Chevron Phillips Chemical Company, LLC; its predecessor, ConocoPhillips; and the parties' agents, successors, and assigns.

The defendant, Chevron Phillips Chemical Company, LLC, and ConocoPhillips voluntarily submit to the jurisdiction of the Court and agree not to contest the validity of the Consent Decree in any subsequent proceeding to implement or enforce its terms.

6. Any transfer of ownership or operation of the Facility to any other person must be conditioned upon the transferee's agreement to undertake the obligations required by this Decree, as provided in a written agreement between Defendant and the proposed transferee, enforceable by the United States as third-party beneficiary of such agreement. At least 30 days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 6, the United States Attorney for the Southern District of Texas, and the United States Department of Justice, in accordance with Section XIV of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree. No transfer of ownership or operation of the Facility, whether in compliance with this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented.

7. Defendant shall provide a copy of this Consent Decree to

all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree, by notifying the persons identified above as to the existence of the Consent Decree, and by posting the Consent Decree in a public place. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

8. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree, except as provided in Section IX of this Decree (Force Majeure).

III. DEFINITIONS

9. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Complaint" shall mean the complaint filed by the United States in this action;

b. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section

XXIII);

c. "Date of Entry" shall mean the effective date of the Consent Decree which shall be the date upon which this Consent Decree is entered by the Court.

d. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;

e. "Defendant" shall mean Chevron Phillips Chemical Company, LP.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;

g. "Facility" shall mean Defendant's Pasadena Plastics Complex located in Pasadena, Harris County, Texas.

h. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral;

i. "Parties" shall mean the United States and Defendant;

j. "Section" shall mean a portion of this Decree identified by a roman numeral;

k. "United States" shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

10. Within 30 days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$1,800,000.00 as a civil penalty. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to Defendant following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of Texas. At the time of payment, Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-2-1-07840 and the civil action number of this case) to the United States in accordance with Section XIV of this Decree (Notices). In the event that the payment required to be made by Defendant under this Section of this Decree is not received when due, interest shall accrue on the amount owed through the date of payment. For late payments due under this Section, the interest rate shall be at the rate provided pursuant to 28 U.S.C. § 1961, that is, a rate equal to the coupon issue yield equivalent (as determined by the Secretary of Treasury) of the average accepted auction price for the last auction of 52-week Treasury bills settled prior to the date this Consent Decree is entered, from the original due date to the date of payment. Interest shall be computed daily and compounded annually.

11. Defendant shall not deduct the civil penalty paid under this Section in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

12. Defendant shall comply with Section 112(r) of the Clean Air Act ("Act"), 42 U.S.C. § 7412(r), 40 CFR Part 68, the Chemical Accident Prevention Provisions, and 40 CFR Part 60, the New Source Performance Standards with respect to the Facility.

13. By the end of four full calendar quarters from the Date of Entry, Defendant shall perform the following work at the Facility:

a. Worst Case and Alternative Release Scenario

Analysis: The Defendant shall revise and update its Risk Management Plan ("RMP") for the Facility. As part of its updated RMP, the Facility will maintain the following records of its offsite consequence analysis:

(1). As set forth in 40 CFR 68.39(a), for worst case scenarios ("WCS"), the Defendant shall describe the vessel or pipeline and substance selected as worst case, assumptions and parameters used, and the rationale for selection for the Facility. In addition, the Defendant shall document the WCSs considered for the Facility as well as the rationale for the selection and rejection of all WCSs considered.

(2). As set forth in 40 CFR 68.39(b), for alternative release scenarios ("ARS"), the Defendant shall

describe the scenarios identified, assumptions and parameters used, and the rationale for the selection of specific scenarios for the Facility. In addition, the Defendant shall document the ARSs considered for the Facility as well as the rationale for the selection and rejection of all ARSs considered. The Defendant shall submit a copy of this documentation for the Facility to EPA for Agency review and comment, and approval no later than the First Quarterly Report following the Date of Entry in accordance with Section VII (Reporting).

b. Inclusion of Natural Gas System in the PHA: The Defendant shall review and make necessary updates to its PHA for the Facility to include the natural gas system (including but not limited to the portion supplying the Catalyst Activation Unit #5). The Defendant shall submit a copy of the reviewed PHA for the Facility to the EPA for Agency review and comment, and approval by no later than the Second Quarterly Report in accordance with Section VII (Reporting).

c. Communication with Employees: The Defendant shall submit to EPA a document identifying how the Facility communicates its PHA reports, recommendations and resolutions of recommendations to operating, maintenance and other employees whose work assignments are in the process for which the PHA was done and who may be affected by the actions in accordance with 40 CFR 68.83(c) and 40 CFR 68.67(e). The Defendant shall provide

this document for the Facility to the EPA for Agency review and comment, and approval by no later than the Second Quarterly Report in accordance with Section VII (Reporting).

d. Document Control of Process Flow Diagrams ("PFDs") and Piping and Instrument Diagrams ("P&IDs"); Review and Update of PFDs: The Defendant shall define document control standards for PFDs and P&IDs for the Facility, and will review and make necessary updates to PFDs for all covered processes in compliance with 40 CFR 68.65. The Defendant shall require the Facility to report on its review and updating of the above Manual to the EPA for Agency review and comment, and approval by no later than the Third Quarterly Report in accordance with Section VII (Reporting).

e. Evaluation of Contractor Performance: The Defendant shall submit to EPA documentation of how it evaluates the training and performance of contractors in fulfilling its obligations as specified in 40 CFR 68.87(b)(5) for the Facility. This document shall identify how the Facility evaluates the training contractors receive in specific hazards related to processes, and in specific procedures (e.g. F-1 Lock-Out-Tag-Out, F-2 Equipment Isolation Program) prior to performing work in areas that could affect process safety. The Defendant shall provide this documentation for the Facility to the EPA for Agency

review and comment, and approval by no later than the Second Quarterly Report in accordance with Section VII (Reporting).

f. Evaluation of Mechanical Integrity: The Defendant shall review and evaluate its procedures for maintaining the ongoing mechanical integrity, consistent with 40 CFR 68.73, for the Facility for: (1) sections of incoming chemical pipelines from the metering station (the demarcation point between the supplier and the Facility) to the process unit; (2) natural gas service for the Catalyst Activation Unit; (3) rupture discs (where those rupture discs are the sole relief device); and (4) dikes. The Defendant shall provide this documentation for the Facility to the EPA for Agency review and comment, and approval by no later than the Third Quarterly Report in accordance with Section VII (Reporting).

g. Review and Updating of Design Manuals: The Defendant shall review and make necessary updates to its Engineering QA-QC Design Procurement Source Inspection Manual to ensure that practices in the manuals for new plants and equipment are consistent with 40 CFR 68.73(f)(3) for the Facility. The Defendant shall report on its review and updating of the above Manual for the Facility, and submit a copy of the updated Manual to the EPA for Agency review and comment, and approval by no later than the Third Quarterly Report in accordance with Section VII (Reporting).

h. Management of Change: The Defendant shall document how employees involved in operating a process, and maintenance and contract employees whose jobs will be affected by a change in the process, are informed of, and trained in, the change prior to start-up of the process or affected part of the process, consistent with 40 CFR 68.75(c), for the Facility. The Defendant shall require the Facility to provide this documentation for the Facility to the EPA for Agency review and comment, and approval by no later than the Second Quarterly Report in accordance with Section VII (Reporting).

i. Change Management Requirements for Changes in Rotating Equipment Inspection Frequencies: The Defendant shall establish and provide training for change management requirements for changes in inspection frequencies for rotating equipment in order to properly document the basis and rationale for changes in the frequency of inspections, consistent with 40 CFR 68.73(d)(3) and 68.75(c), for the Facility. The Defendant shall submit documents demonstrating compliance with this requirement for the Facility to the EPA for Agency review and comment, and approval by no later than the Second Quarterly Report in accordance with Section VII (Reporting).

j. Inspection and Test Documentation: The Defendant shall document the procedure it uses to ensure that the documentation of inspections and tests on mechanical integrity

covered equipment always includes the name of the employee(s) conducting the inspection for the Facility to the EPA for Agency review and comment, and approval by no later than the First Quarterly Report in accordance with Section VII (Reporting).

k. Communication of Incident Investigations: The Defendant shall review and evaluate its procedures for effectively communicating incident reports and resolutions with all affected personnel whose job tasks are relevant to the incident findings, consistent with 40 C.F.R. part 68.81(f), for the Facility. The Defendant shall report on this review and evaluation for the Facility to the EPA for Agency review and comment, and approval by no later than the Second Quarterly Report in accordance with Section VII (Reporting).

1. Emergency Procedures Manual. The Defendant shall review and update its Emergency Procedures Manual, consistent with 40 CFR 68.95, for the Facility to ensure that:

(1). Procedures are current in all areas including dock, rail spurs, and rail-car repair shop, and flare areas; and

(2). The Manual contains information for the use of emergency response equipment. This information also must be communicated and appropriate persons trained in how to use this information.

In addition, the Manual will identify the persons, locations, and telephone numbers to contact for more action plan information. The Defendant shall provide a copy of its updated Emergency Procedures Manual for the Facility to the EPA for Agency review and comment, or approval by no later than the Second Quarterly Report in accordance with Section VII (Reporting).

14. The Defendant may demonstrate compliance with portions of Paragraph 13 for the Facility in its Reports submitted in accordance with Section VII prior to expiration of the 365 day compliance period. If the Defendant does so, it shall identify with specificity which portions of Paragraph 13 the Report addresses. EPA may approve the submission or decline to approve it and provide written comments. If EPA deems any document to be submitted required by paragraph 13 to be inadequate, it shall so notify the Defendant within a reasonable period of time. Within 60 days of receiving EPA's written comments, Defendant shall either: (i) alter the submission consistent with EPA's written comments and provide the submission to the EPA for final approval; or (ii) submit the matter for dispute resolution under Section X of this Decree (Dispute Resolution), in which Defendant must show that any disputed submissions comply with 40 C.F.R. Part 68.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

15. Defendant shall implement a Supplemental Environmental Project ("SEP"), by procuring and arranging for the installation of a fuel cell to provide electricity at Moody Gardens, located in Galveston Texas, in accordance with all provisions of Appendix A to this Consent Decree, which is attached hereto and incorporated into this Decree by reference ("Fuel Cell SEP"). The Fuel Cell SEP shall be completed within twelve months after entry of this Decree. The Fuel Cell SEP shall be designed to provide electricity from a fuel cell for the operation of the greenhouse and wastewater treatment plant at Moody Gardens. The fuel cell will be designed to operate on hydrogen gas produced from natural gas, or methane gas which is extracted from the wastewater sludge generated at Moody Gardens Galveston Island ("Moody Gardens"). Defendant is responsible for the satisfactory completion of the Fuel Cell SEP in accordance with the requirements of this Decree. Defendant will use Moody Gardens to plan and implement the completed Fuel Cell SEP within twelve months after entry of this Decree.

16. Defendant shall implement a SEP by procuring and arranging for \$30,000 of hazmat training for volunteer firefighters working for the Pasadena Volunteer Fire Department, and \$20,000 for the purchase of hazmat equipment for use by the Pasadena Volunteer Fire Department ("Hazmat SEP"). Defendant

will purchase the training, and the Pasadena Volunteer Fire Department will coordinate attendance. All training will meet OSHA/EPA and NFPA requirements. The training and equipment shall be provided in accordance with all provisions of Appendix B to this Decree, which is attached hereto and incorporated into this Decree by reference. Defendant will purchase the equipment as identified in Appendix B within three months after entry of this Decree, and shall complete the Hazmat SEP within twelve months after entry of this Decree.

17. In implementing the two SEPs identified above, Defendant shall spend not less than \$1,200,000 in eligible SEP costs as provided in Appendices A and B. With regard to the SEPs, Defendant certifies the truth and accuracy of each of the following:

a. That all cost information provided to EPA in connection with EPA's approval of the Fuel Cell SEP is a complete and accurate reflection of the cost information provided to Defendant by Moody Gardens, and represents Moody Gardens' fair estimate of the costs necessary to implement the SEP;

b. That, as of the date of this Decree, Defendant has not been required to perform or develop the SEPs by any federal, state, or local law or regulation, nor is Defendant required to perform or develop the SEPs. In implementing the SEPs, Defendant shall spend not less than \$1,200,000 in eligible SEP costs as

provided in Appendices A and B by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. That the SEPs are not projects that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. That Defendant has not received, and is not negotiating to receive, credit for the SEPs in any other enforcement action; and

e. That Defendant will not receive any reimbursement for any portion of the SEPs from any other person other than a person identified in Paragraph 5.

18. SEP Completion Report

a. Within 30 days after the date set for completion of the SEPs, Defendant shall submit a SEP Completion Report for each completed SEP to the United States, in accordance with Section XIV of this Consent Decree (Notices). The SEP Completion Reports shall contain the following information:

(1). A detailed description of the SEP as implemented;

(2). A description of any problems encountered in completing the SEP and the solutions thereto;

(3). An itemized list of all SEP-eligible costs;

(4). Certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and

(5). A description of the environmental and public health benefits expected from the SEP.

19. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to determine the adequacy of the SEPs completion or eligibility of SEP costs.

20. Defendant bears the burden of clearly segregating eligible SEP costs from other costs not eligible for SEP credit. Any non-segregable cost evidence that contains both SEP eligible and non-SEP eligible cost items shall be disallowed in its entirety. The parties agree that all payments from Defendant to Moody Gardens pursuant to the work plan referenced in Appendix A are SEP-eligible.

21. Within 30 days after receipt of each of the SEP Completion Reports, the United States shall notify Defendant if Defendant has not satisfactorily completed the SEP. If the SEP has not been satisfactorily completed in accordance with all schedules, or if the amount expended on performance of the SEP is less than the amount set forth in Paragraph 17(a) above, Stipulated Penalties may be assessed under Section VIII of this Consent Decree.

22. Disputes concerning the satisfactory performance of the SEPs and the amount of eligible SEP costs may be resolved under Section X of this Decree (Dispute Resolution). No other disputes

arising under this Section shall be subject to Dispute Resolution.

23. The submission required under this Section shall be signed by an official with knowledge of the SEPs completion and shall bear the certification language set forth in Paragraph 28, below.

24. Defendant shall require the Facility to make reasonable efforts to publicize the SEPs and any benefits the SEPs provide to the community. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the SEPs under this Decree shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action, Chevron Phillips Chemical Company, LP, taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act."

VII. REPORTING REQUIREMENTS

25. Defendant shall submit the following reports commencing 30 days after the first full calendar quarter after the Date of Entry:

a. Within 30 days after the end of each full calendar-year quarter (i.e., by April 30, July 31, October 31, and January 31) after entry of this Consent Decree, until termination of this Decree pursuant to Section XIX, Defendant shall submit a quarterly report for the preceding quarter that

shall include information regarding status of any construction or compliance measures, as well as a discussion of Defendant's progress in satisfying its obligations in connection with the SEP under Section VI of this Decree and an itemization (with copies of supporting documentation) of costs incurred since the previous report.

b. If Defendant becomes aware that it has violated any requirement of this Consent Decree, it shall notify the United States of such violation and its likely duration in writing within ten working days of the day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall include a statement to that effect in the report. Defendant shall investigate to determine the cause of the violation and then shall submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph relieves Defendant of its obligation to provide the requisite notice for purposes of Section IX of this Decree (Force Majeure).

26. If Defendant becomes aware of any violation or other event that poses an immediate threat to the public health,

welfare, or the environment, Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but not later than 24 hours after Defendant first knew of, or should have known of, the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

27. All reports shall be submitted to the persons designated in Section XIV of this Decree (Notices).

28. Each report submitted by Defendant under this Section shall be signed by the Process Safety Manager/Risk Management Plan Coordinator of the submitting party and include the following certification:

I certify under penalty of law that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather present the information contained herein. I certify, based on information and belief formed after reasonable inquiry, that the information is true, accurate and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

29. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Clean Air Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

30. Any information provided pursuant to this Consent

Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

31. If Defendant fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$1,000 per day for each day that the payment is late. Late payment of the civil penalty shall be made in accordance with Section IV, Paragraph 10 above. Stipulated Penalties shall be paid in accordance with this Section VIII. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Decree, or for Stipulated Penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraphs 10 and 11, above.

32. Defendant shall be liable for Stipulated Penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

33. Compliance Milestones. The following Stipulated

Penalties shall accrue per violation per day for each violation of the requirements set forth in Paragraph 13 of this Decree (except for Reporting obligations); provided however that no stipulated penalties shall begin to accrue under this paragraph until the later of (1) after one year from the entry of the Consent Decree, or (2) 120 days after EPA declines to approve a submission or provides written comments in response to a submission:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$400	1st through 14th day
\$1,000	15th through 30th day
\$2,000	31st day and beyond

34. Reporting Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of the reporting requirements of Section VII of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$200	1st through 14th day
\$500	15th through 30th day
\$1,000	31st day and beyond

35. Compliance with SEPs

a. If Defendant has otherwise satisfactorily completed the SEPs, but has spent less than the amount set forth in Paragraph 17 above, Defendant shall pay a stipulated penalty

equal to the difference between the amount of total eligible SEP costs incurred by Defendant and the amount set forth in Paragraph 17.

b. If Defendant fails to comply with the schedules in Section VI of this Consent Decree for implementing the SEPs, Defendant shall pay Stipulated Penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$500	15th through 30th day
\$750	31st day and beyond

Such penalties shall accrue from the date Defendant was required to meet each such milestone, until compliance with the milestone is achieved. The dispute resolution procedures of Section X shall be available to resolve disputes arising under or with respect to Paragraph 35, including the right of the defendant to assert that it cannot comply with the schedules in Section VI of this Consent decree for implementing SEPs due to a force majeure event as defined in Section IX of the Consent Decree.

36. Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue

simultaneously for separate violations of this Consent Decree. Defendant shall pay any Stipulated Penalty within 30 days of receiving the United States' written demand.

37. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due it under this Consent Decree.

38. Stipulated Penalties shall continue to accrue as provided above, during any Dispute Resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 days of the effective date of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 days of receiving the Court's decision or order, except as provided in Subparagraph c, below;

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 days of receiving the final

appellate court decision.

39. Defendant shall, as directed by the United States, pay Stipulated Penalties owing to the United States by EFT in accordance with Section IV, Paragraph 10, above.

40. Defendant shall not deduct Stipulated Penalties paid under this Section in calculating its federal income tax.

41. If Defendant fails to pay Stipulated Penalties according to the terms of this Consent Decree, the United States shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. § 1961.

42. Subject to the provisions of Section XII of this Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law. Where a violation of the Consent Decree also is a violation of the Clean Air Act or its implementing regulations, the United States will elect between seeking stipulated penalties and commencing a new action under the Clean Air Act.

IX. FORCE MAJEURE

43. A "force majeure event" is any event beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays the performance of any obligation under

this Consent Decree. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

44. Defendant shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time Defendant first knew or reasonably should have known of, a claimed force majeure event. Defendant shall also provide written notice, as provided in Section XIV of this Consent Decree (Notices), within seven days of the time Defendant first knew of, or by the exercise of best efforts, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Defendant's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendant's rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude Defendant from asserting any claim of force majeure. Defendant shall be deemed to know of any circumstance of which Defendant, its contractors, or any entity controlled by Defendant knew or should have known.

45. If the United States agrees that a force majeure event has occurred, the United States will agree to extend the time for Defendant to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event

shall not, by itself, extend the time to perform any other obligation.

46. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendant, the United States' position shall be binding, unless Defendant invokes Dispute Resolution under Section X of this Consent Decree. In any such dispute, Defendant bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that Defendant gave the notice required by Paragraph 44; and that the force majeure event caused any delay Defendant claims was attributable to that event.

X. DISPUTE RESOLUTION

47. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, such procedures shall not apply to actions by the United States to enforce obligations of the Defendant that have not been disputed in accordance with this Section.

48. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when one party sends the other a

written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 days from the date the dispute arises, unless that period is modified by written agreement. Such Notice of Dispute shall state clearly the matter in dispute. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 45 days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

49. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not be limited to, any factual data, analysis or opinion supporting Defendant's position, and any supporting documentation relied upon by Defendant.

50. If the United States disagrees with Defendant's position, the United States shall serve its Statement of Position within 45 days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but may not be limited to, any factual data, analysis, or opinion supporting that position and all supporting document relied upon

by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with Paragraph 51.

51. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 days of the date of receipt of the United States' Statement of Position pursuant to the preceding Subparagraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

52. The United States shall respond to Defendant's motion within the time period provided in the Local Rules of this Court, unless the parties stipulate otherwise. Defendant may file a reply memorandum, to the extent permitted by the Local Rules or the Parties' stipulation, as applicable.

53. In any dispute under this Paragraph, Defendant shall bear the burden of showing that its position complies with this Consent Decree and the Clean Air Act, and that Defendant is

entitled to relief under applicable law.

54. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, that is not in dispute, unless the United States or the Court agrees otherwise. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided above. If Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

55. The United States and its representatives, including attorneys, shall have the right of entry to any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. obtain documentary evidence relevant to determining Defendant's compliance with this Decree, including photographs and similar data; and

d. assess Defendant's compliance with this Consent Decree.

56. Until five years after the termination of this Consent Decree, Defendant shall retain records sufficient to demonstrate its compliance with the Decree. This record retention requirement shall apply regardless of any corporate or institutional document-retention policy to the contrary. At any time during this record-retention period, the United States may request copies of any documents or records required to be maintained under this Paragraph.

57. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

58. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action, through the date of the lodging of the Complaint, against the Defendant, and other parties bound by this Consent Decree and expressly listed in Paragraph 5 above. The above resolution of civil claims also extends to the officers, directors and employees of the Defendant/parties identified in Paragraph 5, but only to the extent that the alleged liability of an officer, director or employee is based on its status and in

its capacity as an officer, director or employee of the Defendant, and not to the extent that the alleged liability arose independently of the alleged liability of the Defendant.

59. This Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the Act, or under other federal or state laws, regulations, or permit conditions, except for matters resolved by this Consent Decree or as expressly specified herein.

60. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7412(r) et seq.

61. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not identified in Paragraph 5 of this Consent Decree.

62. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, anyone who is not a

party to this Consent Decree.

66. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health, welfare, or the environment arising at, or posed by, Defendant's Facility whether related to the violations addressed in this Consent Decree or otherwise.

XIII. COSTS

64. The Parties shall bear its own costs of this action, including attorneys fees.

XIV. NOTICES

65. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-07840

To EPA:

Barry Feldman,
Enforcement Officer

U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Jan Gerro,
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

To Defendant(s):

Van Long
Pasadena Plastics Complex
1400 Jefferson Road
Pasadena, TX 77506

Jeff Kaplan
ChevronPhillips Chemical Company
10001 Six Pines Drive
The Woodlands, TX 77380

66. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

67. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

68. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XVI. RETENTION OF JURISDICTION

69. The Court shall retain jurisdiction of this case until termination of this Consent Decree, for the purpose of enabling

any of the Parties to apply to the Court for such further order, direction, or relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section X of this Decree (Dispute Resolution).

XVII. MODIFICATION

70. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court. Changes in schedules, not to exceed 90 days, which are contained in Paragraph 13 and Section VI of this Decree may be modified upon written agreement of the Parties without Court approval.

XVIII. TERMINATION

71. After Defendant has (1) maintained continuous satisfactory compliance with this Consent Decree for a period of one year after certification of completion of all work required under Paragraph 13 of this Consent Decree, (2) completed the SEP, and (3) has paid the civil penalty (and any accrued Stipulated Penalties) as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied these requirements, together with

all necessary supporting documentation.

72. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

73. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section X of this Decree. However, Defendant shall not seek judicial resolution of any dispute, under Paragraph 51 of Section X, until 60 days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

74. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice.

XX. SIGNATORIES/SERVICE

75. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

76. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

77. Defendant agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

78. The Parties agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

79. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree

and supersede all prior agreements and understandings, whether oral or written. Other than the Appendices, which are attached to and incorporated in this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. FINAL JUDGMENT

80. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States and Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXIII. APPENDICES

81. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the *Fuel Cell SEP*;

"Appendix B" is the Hazmat SEP.

Dated and entered this ____ day of _____, ____.

UNITED STATES DISTRICT JUDGE
Southern District of Texas
FOR THE UNITED STATES OF AMERICA

FOR THE UNITED STATES:

Dated: 9.28.04

Tom Sansonetti
THOMAS L. SANSONETTI
 Assistant Attorney General
 Environment and Natural Resources Division
 United States Department of Justice

Dated:

RICHARD GLADSTEIN
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-1711

FOR THE UNITED STATES:

MICHAEL SHELBY
United States Attorney
Southern District of Texas

Dated: _____

Michelle Zingaro, Esq.
Assistant United States Attorney
Office of United States Attorney
Southern District of Texas
P.O. Box 61129
Houston, Texas 77208
(713) 567-9512

FOR THE ENVIRONMENTAL PROTECTION AGENCY:

Date: _____

RICHARD E. GREENE
Regional Administrator
U.S. Environmental Protection
Agency, Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

Date: _____

JAN GERRO
Senior Enforcement Counsel
U.S. Environmental Protection
Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

FOR DEFENDANT CHEVRON PHILLIPS CHEMICAL COMPANY LP

Date: _____

JEFFREY A. KAPLAN, ESQ.
Assistant General Counsel
10001 Six Pines Drive
P.O. Box 4910
The Woodlands, Texas
77387-4910
(832) 813-4671
(832) 813-6060 (telefax)
Kaplaja@cpchem.com

FOR THE CHEVRON PHILLIPS CHEMICAL COMPANY LLC

Date: _____

CRAIG GLIDDEN, General Counsel
Chevron Phillips Chemical Company LLC
10001 Six Pines Drive
The Woodlands, Texas
77380-1498

FOR CONOCOPHILLIPS

Date: _____

JON-AL DUPLANTIER, Managing Counsel
ConocoPhillips
600 North Dairy Ashford
Houston, Texas 77079

APPENDIX A

SUPPLEMENTAL ENVIRONMENTAL PROJECT MOODY GARDENS, INC. – GALVESTON, TEXAS

This project is to provide up to \$1,150,000 to procure and arrange for installation of a fuel cell to provide electricity at Moody Gardens in Galveston, Texas. Moody Gardens, Inc. is a non-profit corporation that utilizes nature for education, conservation, recreation, and research.

The fuel cell will be a single United Technologies Company PureCell™ 200 (PC25) model capable of generating 200KW/235kVA of power at 480 volts, 3-phase, 4-wire, 60 Hz as specified by the vendor's nameplate (or comparable fuel cell). The power supplied from the fuel cell will be sent to an existing Moody Gardens power distribution module (separate from the public grid). From the power distribution module, the power will be distributed to various segments of the Moody Gardens facility.

Moody Gardens will manage and oversee the project, including the retention and use of contractors to assist in the installation. Any funds up to \$1,150,000 not expended on procurement and installation will be used to purchase natural gas as feed for the fuel cell.

APPENDIX B

SUPPLEMENTAL ENVIRONMENTAL PROJECT

PASADENA VOLUNTEER FIRE DEPARTMENT – PASADENA, TEXAS

Due to the large number of petrochemical plants in the Pasadena area, it is important that a well-trained and well-equipped fire department be available to protect the citizens of Pasadena. Accordingly, this project is to provide up to \$30,000 of hazmat training for the Pasadena Volunteer Fire Department and to provide up to \$20,000 for the purchase of hazmat equipment needed for the Pasadena Volunteer Fire Department.

This project will make multiple training sessions available for all of the approximately 140 volunteer firefighters and will cover three levels of hazmat training: (i) Technician; (ii) First Responder; and (iii) Refresher.

This project is also to provide up to \$20,000 for the purchase of hazmat equipment needed by the Pasadena Volunteer Fire Department. The Department's Fire Chief will identify needed equipment.